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COMMISSION ON HUMAN RIGHTS

Fifty-fourth session

SUMMARY RECORD OF THE 31st MEETING

Held at the Palais des Nations, Geneva,
on Friday, 3 April 1998, at 3 p.m.

Chairman:	Mr. SELEBI	(South Africa)
later:	Mr. GALLEGOS CHIRIBOGA	(Ecuador)
later:	Mr. SELEBI	(South Africa)

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(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

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The meeting was called to order at 3 p.m.

CONSIDERATION OF DRAFT RESOLUTIONS UNDER AGENDA ITEMS 19, 13 AND 14

Draft resolution under item 19 (E/CN.4/1998/L.18)

Draft resolution E/CN.4/1998/L.18 (drafting of a declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms)

1. Mr. WILLE (Norway), introducing the draft resolution on behalf of its co-sponsors, stated that the Commission would, by adopting the draft declaration it contained, be making a significant contribution to the celebration of the fiftieth anniversary of the Universal Declaration of Human Rights and would express in a concrete fashion its support for those who were in the front line of the promotion and protection of those rights throughout the world. The effectiveness of the working group given responsibility for preparing the draft - attributable to the spirit of constructive compromise which prevailed throughout its proceedings - was a proof of what could be achieved when the will to work together towards a common goal was present. He was confident that the draft would be adopted without a vote, or even by acclamation.

2. Ms. KLEIN (Secretary of the Commission) announced that the delegations of Belarus, Belgium, Bolivia, Botswana, Bulgaria, Costa Rica, Georgia, Greece, Guatemala, India, Israel, the Republic of Korea, the Russian Federation and Uruguay had also become co-sponsors of the draft resolution.

3. Mr. MARTINEZ (Cuba) had not the slightest doubt that that draft resolution, which concluded in a particularly satisfying manner the debate on item 19, would be adopted by consensus. He particularly welcomed the content of paragraph 3 of the operative part, which would enable the Commission to reflect in greater depth on the way of bringing support to the efforts already being made to secure respect for the right of individuals, groups and non-governmental organizations to seek to ensure respect for human rights and fundamental freedoms, resorting to that end to the different mechanisms of the Commission and the Sub-Commission and possibly treaty bodies as well. He hoped that the draft declaration contained in the draft resolution would be adopted by the General Assembly at its forthcoming session.

4. Draft resolution E/CN.4/1998/L.18 was adopted by acclamation.

5. The Chairman stated that the Committee had completed consideration of agenda item 19.

Draft resolutions under item 13 (E/CN.4/1998/L.12, L.13 and L.14)

Draft resolution E/CN.4/1998/L.12 (question of the death penalty)

6. Mr. TOSCANO (Italy), introducing the draft resolution, emphasized that the approach adopted in the draft was one of dialogue and gradual progress toward the following objectives: full compliance with obligations under freely accepted international instruments; observation of the safeguards

guaranteeing protection of the rights of persons sentenced to capital punishment; the progressive reduction of the number of offences carrying the death penalty; and a moratorium on executions. The draft paralleled the trend identified by the Secretary-General in his report (E/CN.4/1998/82 and Corr.1), namely that the community of States was tending to move away from the death penalty. The draft resolution requested the Secretary-General to continue to update his analysis of changes in national law and practice on the subject. Finally, the text sought to promote the continuation of dialogue, not only with the States which shared the objectives of the co-sponsors, but also, and above all, with those States which had wished to reiterate their reservations in document E/CN.4/1998/156.

7. Mr. XIE Bohua (China) pointed out that Switzerland was not a member of the Commission on Human Rights. Consequently the reference to that country as one of the authors of the draft resolution should be followed by an asterisk referring to the footnote.

Explanations of votes before the vote

8. Mr. ZAKI (Pakistan) stated that the draft resolution under consideration recognized that the death penalty could be imposed for the most serious crimes, as did the International Covenant on Civil and Political Rights in article 6, paragraph 2. That was the situation in Pakistan, where the death penalty was applied only exceptionally, after due process of law and after consummation of the sentence by a higher body. The accused could appeal to the High Court or the Supreme Court; he could also petition for a pardon from the President, which had been granted in several cases. If the draft resolution was put to the vote, Pakistan would be obliged to vote against it.

9. Mr. LEPATAN (Philippines) was unable to support a text which called for the progressive abolition of the death penalty or the introduction of a moratorium on executions, since capital punishment was provided for in the national Constitution, which was a fundamental text reflecting the sovereign will of the Philippine people. It was for each country to decide whether or not to apply the death penalty in order to protect individuals against the authors of heinous crimes. He wished to make it clear that in the Philippines the death penalty was pronounced only in respect of such crimes; that due process of law and the rights of the accused, including the right to petition for pardon or a commutation of the sentence, were fully respected; that minors under 18 years of age could not be sentenced to death; and that the death penalty was inflicted by means of humane procedures.

10. Consequently, while respecting the right of countries to have a viewpoint differing from its own, the Philippines would not consider itself bound by the provisions of the text if it were adopted and would abstain if it was put to the vote.

11. Mr. MOOSE (United States) said that under international instruments, including the provisions of the International Covenant on Civil and Political Rights, and according to democratic practice, the question of whether to abolish or retain the death penalty was a matter for each individual State. Some States had decided to abolish the death penalty; others, including the majority of the constituent states of the United States, had chosen to retain

it. In the United States the matter was a subject of extremely lively debate, and the country intended to keep full control of its decisions on the subject. Consequently the United States delegation could not support the draft resolution under consideration.

12. Mr. MORJANE (Tunisia) stated that article 5 of the Tunisian Constitution set forth the principle of the integrity of the human person and the inviolability of life. Consequently the death penalty was pronounced only in exceptionally serious cases. The last executions to take place in Tunisia were in 1992; the implication was that the death penalty had in practice been abolished in Tunisia. If the draft resolution under consideration was put to the vote, the Tunisian delegation would abstain.

13. Mr. SINWIA (Bhutan) stated that his country was not opposed to the objectives sought by the authors of the draft resolution under consideration. However, and even though the death penalty had not been applied in Bhutan since 1964 - which constituted a de facto moratorium on executions - the Bhutanese delegation could not support draft resolution L.12, since it ran counter to the right of sovereign States and their peoples to determine their own legal measures and penalties for the advancement of peace, security and justice.

14. Mr. ZAFERA (Madagascar) said that although the country's Penal Code, adopted in 1960 when Madagascar became independent, provided for the death penalty in respect of crimes committed with aggravating circumstances or serious offences deleterious to the internal or external security of the country, the country's criminal courts had since then imposed the death penalty only two or three times; moreover, in each case the sentence had been commuted to imprisonment with hard labour for life following an appeal for pardon or a petition for cassation. Consequently, if resolution L.12 was put to the vote, the Malagasy delegation would be guided by the foregoing considerations when voting.

15. At the request of the representative of the United States, seconded by the representative of Rwanda, draft resolution E/CN.4/1998/L.12 was put to the vote.

16. At the request of the representative of Italy, a roll-call vote was taken.

17. Mexico, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Argentina, Austria, Belarus, Brazil, Canada, Cape Verde, Chile, Congo, Czech Republic, Denmark, Ecuador, France, Germany, Ireland, Italy, Luxembourg, Mexico, Nepal, Peru, Poland, Russian Federation, South Africa, Ukraine, United Kingdom, Uruguay, Venezuela.

Against: Bangladesh, Botswana, Bhutan, China, Democratic Republic of Congo, Indonesia, Japan, Republic of Korea, Malaysia, Pakistan, Rwanda, Sudan, United States.

Abstaining: Cuba, El Salvador, Guatemala, Guinea, India, Madagascar, Morocco, Philippines, Senegal, Sri Lanka, Tunisia, Uganda.

18. Draft resolution E/CN.4/1998/L.12 was adopted by 26 votes to 13, with 12 abstentions.

Explanation of vote after the vote

19. Mr. CHOWDHURY (Bangladesh) explained that, although his delegation had been unable to vote for the draft in present circumstance, it nevertheless hoped that the situation in Bangladesh would improve and that it would be able to take a stand in favour of the abolition of the death penalty in the fairly near future.

Draft resolution E/CN.4/1998/L.13 (Status of the international Covenants on human rights)

20. Mr. WILLE (Norway), introducing draft resolution L.13, said that the text reaffirmed the importance of the international Covenants on human rights and appealed to all States which had not yet done so to become parties to them as well as to the optional protocols relating to them. The High Commissioner for Human Rights herself had on 19 March recalled the necessity of reaffirming the commitments entered into in Vienna and of envisaging the possibility of achieving universal ratification of the six major international instruments on human rights, if possible during the next five years.

21. The speaker went on to draw the attention of the Commission to paragraphs 4, 5 and 7, in which States parties were urged to comply strictly with their treaty obligations and to avoid the erosion of human rights by derogations which did not comply with the additions and procedures laid down in article 4 of the International Covenant on Civil and Political Rights, or by reservations which were over-general or incompatible with the object and purpose of the relevant instrument. Paragraphs 12 and 13 reminded States parties of their obligation to submit their reports in good time and of the usefulness of the observations made at the conclusion of the consideration of those reports by the treaty bodies, and in particular the Human Rights Committee and the Committee on Economic, Social and Cultural Rights.

22. Mr. Wille pointed out that paragraph 11 had been amended to read as follows: "Takes note of general observation 26 adopted by the Human Rights Committee and general observations 7 and 8 adopted by the Committee on Economic, Social and Cultural Rights ...".

23. Ms. KLEIN (Secretary of the Commission) announced that Bulgaria, France, Guatemala, Madagascar, the Netherlands, Portugal, Romania, Spain, Ukraine, and Uruguay had also become sponsors of the resolution.

24. Draft resolution E/CN.4/1998/L.13 was adopted without a vote.

Draft resolution E/CN.4/1998/L.14 (Fiftieth anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide)

25. The CHAIRMAN observed that, due to an oversight, the name of the main co-sponsor of the draft text - Armenia - had been omitted from the list of countries which had prepared the text.

26. Mr. NAZARIAN (Armenia) introducing the draft resolution, drew attention to the continuing importance of the Convention on the Prevention and Punishment of the Crime of Genocide. He invited the Member States in the Commission to reaffirm during 1998, the year of the fiftieth anniversary of the adoption of the Convention, the obligations they had entered into by adhering to it. He also emphasized that the draft resolution invited States which had not yet done so to ratify the Convention and called on the international community as a whole to multiply its efforts to ensure full and effective implementation of the provisions of the Convention. He hoped that the draft resolution under consideration would be adopted by consensus.

27. Ms. KLEIN (Secretary of the Commission) read out the list of countries which had also become sponsors of the draft, namely Bangladesh, Belgium, Brazil, Bulgaria, Canada, Cuba, Israel, Malaysia, the Netherlands, New Zealand and Portugal.

28. Draft resolution E/CN.4/1998/L.14 was adopted without a vote.

29. The CHAIRMAN stated that the Committee had completed consideration of agenda item 13.

Draft resolution under agenda item 14 (E/CN.4/1998/L.15)

Draft resolution (E/CN.4/1998/L.15) (effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights)

30. Mr. SPLINTER (Canada), introducing draft resolution E/CN.4/1998/L.15, drew attention to the following drafting amendments made in the operative part of the text: in the last line of paragraph 1, replace "proposed at" by "of"; in the fifth line of paragraph 15, replace "of" by "their obligations under"; and in the sixth line of paragraph 21, after "character" add ", acknowledged impartiality". The draft resolution sought to bring about the adoption of concrete measures to increase the efficiency of the treaty body system, in particular by finding the additional resources needed and by improving the procedures for the submission of reports. Governments, specialized agencies and other United Nations bodies, intergovernmental and non-governmental organizations and individuals concerned were invited to communicate their views on the reports of independent experts. The draft resolution also recalled the importance of the principles of equitable geographical distribution of membership of treaty bodies as well as the competence and impartiality of members and called on States parties to consider how to give better effect to those principles. Finally, it welcomed the contribution of the treaty bodies, within their mandates, to the prevention of violations of

fundamental rights. The draft resolution was the outcome of long, frank and constructive discussions, and the Canadian delegation hoped that it would be adopted without a vote.

31. Ms. KLEIN (Secretary of the Commission) announced that Andorra, Argentina, Chile, France, Germany, Ireland, Italy, Japan, the Republic of Korea, Liechtenstein, the Netherlands, Poland, Portugal, Sweden, Switzerland, Ukraine, the United Kingdom of Great Britain and Northern Ireland and Uruguay had also become co-sponsors of the draft resolution.

32. Mr. COMBA (Finance Officer in the Secretariat) read out the financial implications of the provisions of paragraphs 14 and 19 of the operative part of the draft resolution; these amounted to US$ 360,000 and 6,200 respectively.

33. Mr. SPLINTER (Canada) and Mr. FERNANDEZ PALACIOS (Cuba) expressed surprise at the financial implications, of which they had not been informed. In view of the size of the amounts stated, they proposed that a decision on the draft resolution be deferred.

34. It was so decided.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES; and

(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (agenda item 8) (continued) (E/CN.4/1998/5, 32, 33, 34, 35, 36/Rev.1, 37 and Add.1 and 2, 38 and Add.1 and 2, 39 and Add.1 and Add.3 to 5, 40 and Add.1 and 2, 41, 42 and Corr.1, 43, 44 and Add.1 and 2, 111, 129, 139 and 153; E/CN.4/1998/NGO/82 and 99; A/52/387)

35. Mr. ZAKI (Pakistan) stated that the Constitution of his country extended full protection to fundamental rights and freedoms; almost all the articles of the Universal Declaration of Human Rights found specific reflection in it. In particular, it affirmed the inviolability of human dignity and prohibited torture and arbitrary arrests and detention. Notwithstanding the difficulties inherited from the previous Governments, the Government of the Prime Minister, Mr. Sharif, was endeavouring to translate the guarantees proclaimed in the Pakistan Constitution into reality. Pakistan was also a democracy with a judiciary which determinedly protected the rights of citizens, a fiercely independent press and a highly organized and active civil society.

36. The Government of Pakistan was having to cope with a number of problems. The most pervasive of these were poverty and underdevelopment. The problems

had been compounded by the conflict in Afghanistan, which had had adverse economic and social consequences, particularly on account of the proliferation of weapons and of drugs. In addition, Pakistan had generously hosted 3 million Afghan refugees. Another neighbouring country, India, had helped to aggravate the difficulties met with. The repression in Kashmir having failed, that country was financing terrorist groups which were committing atrocities in Karachi and other cities in Pakistan. The Government of Pakistan was determined to combat urban terrorism, sectarian strife and other forms of sabotage with all the means at its disposal, in accordance with democratic principles and in accordance with Pakistan's Constitution and legislation and its international obligations.

37. The Special Rapporteur on torture had recognized in his report (E/CN.4/1998/38, para. 153) that most of the cases mentioned occurred before the present Government was elected. The Pakistan delegation gave an assurance that the use of "fetters" to constrain the movements of prisoners would cease. It appreciated the work of the Working Group on Enforced and Involuntary Disappearances and considered that the Office of the High Commissioner for Human Rights should give it the support it needed. The Government of Pakistan was continuing its dialogue with the machinery of the United Nations.

38. The Pakistan delegation keenly regretted that its country had become the subject of slander spread by non-governmental organizations financed by India. If those NGOs were genuinely concerned with the defence of human rights, they would begin by condemning the massive violations of those rights taking place in occupied Jammu and Kashmir. India was refusing to allow an impartial inquiry into the human rights situation in that State or visits by human rights organizations or United Nations mechanisms. That was not surprising in the light of the report of the Special Rapporteur on torture (E/CN.4/1998/38, para. 113).

39. Mr. LONG Xuequn (China) said that the Government of China had adopted a firm stand to prohibit torture and other cruel, inhuman or degrading treatment or punishment and was taking steps to that end in the legislative, administrative and judicial fields. The provisions of the Penal Code which came into force in October 1997 specifically condemned unlawful detention, the extortion of confessions by torture and corporal punishment in places of detention and unequivocally provided for punishment in cases thereof. The Government of China had also devoted attention to the strengthening of prevention and supervision mechanisms, which could directly accept and investigate criminal cases in the fields mentioned. Deputies of the People's Congress and members of political consultative conferences could inspect prisons and detention centres. Prisoners were authorized to receive visits by reporters and relatives. In addition to the legal, administrative and social supervisory mechanisms mentioned, which had played an important role in preventing and prohibiting torture, the Government of China had initiated publicity campaigns and organized training courses for law enforcement personnel.

40. China was abiding by all the relevant provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and was submitting to the Committee against Torture the reports the latter requested on the implementation of the Convention. It was also participating

in the working group drafting an optional protocol to the Convention. It considered that that protocol should reflect all the principles enshrined in the United Nations Charter, such as the principle of respect for State sovereignty and that the working group should continue its work with prudence so that a text could be adopted which would satisfy all parties. In conclusion, he stated that the Government of China would examine with care the recommendations of the Working Group on Arbitrary Detention in its report on its visit to the People's Republic of China (E/CN.4/1998/44/Add.2).

41. Ms. BEDNAREK (Poland) welcomed the fact that the Special Rapporteur on promotion and protection of the right to freedom of opinion and expression, Mr. Hussain, had in his report (E/CN.4/1998/40) examined a certain number of specific problems, and in particular those arising in the media of countries in transition and in elections. She shared the view of the Special Rapporteur that one of the best guarantees of respect for the right to freedom of expression and information lay in the existence of independent media with diversified ownership, a maximum of self-regulation and a minimum of State interference.

42. However, the Polish delegation considered that countries in transition could not confine themselves to adapting their legislation to international standards. First of all, the State monopoly controlling the whole of the media sector must be broken up. To that end ownership of the communication media must be distributed among the different groups making up civil society. An equitable redistribution of the information media in this way was a precondition for the enjoyment of freedom of expression in a genuinely democratic and pluralist society. Steps sometimes had to be taken to prevent excessive concentration of the media in the hands of a few owners. In the view of the Polish delegation, it was for each country to find a solution striking a balance between protection of the right to property and freedom of expression.

43. The Polish delegation welcomed the recommendation of the Special Rapporteur to the effect that future discussions on implementation of the right to development should take full account of the need to promote and protect the right to seek, receive and impart information. As regards the situation in Poland, she assured the Special Rapporteur that effect would be given to the recommendations contained in the report on his visit (E/CN.4/1998/40/Add.2).

44. Mr. MORJANE (Tunisia) said that since its establishment the Commission on Human Rights had contributed to the development of a universal awareness of the importance of human rights and had played a major role in promoting them and guaranteeing their effective implementation by means of the various and numerous mechanisms it had progressively set up. He also noted that during the last few years countries had been endeavouring to establish the conditions which would allow all individuals to enjoy all their civil and political rights and their economic, social and cultural rights in accordance with the Universal Declaration of Human Rights and the international covenants. However, the efforts being made frequently encountered sociological, economic and cultural realities which sometimes hindered the full and entire promotion of those rights.

45. The Tunisian delegation observed that genuine enjoyment of human rights was impossible except within a society careful to respect the balance between the interests of the community as a whole and those of the individual as such. Economic, social and cultural development and the level of education of the citizens made for the enjoyment of human rights in general. The promotion of those rights was a daily commitment, with a special focus on education.

46. Since 1987, the President of Tunisia, Mr. Ben Ali, had been seeking to build up a modernistic, open and balanced society by adopting a global and progressive approach. At the political and institutional level, a number of reforms had been undertaken to consolidate the primacy of the law, to strengthen the basis of the republican regime, to develop a civic spirit, to enshrine the principle of democracy in legal texts and to give it concrete expression in real life, to promote freedom of opinion and expression and to strengthen individual and public freedoms. Particular mention should be made of the amendments to the Press Code in 1988 and 1993 designed to guarantee freedom of opinion and expression; the 1988 and 1992 amendments to the Law on associations, designed to promote civil society; and the promulgation in 1988 of regulations in line with international standards to govern the organization of prisons. The President of the Higher Committee for Human Rights and Fundamental Freedoms had authority to make unannounced visits to prisons to acquaint himself with conditions of detention.

47. Among the most recent reforms, the Tunisian delegation made particular mention of the revision of the Constitution, which integrated and formally established a multi-party system, in October 1997. In addition, a draft amendment to the electoral code was under discussion; it was designed to reform the voting method adopted since the last legislative elections, in 1994, which enabled the opposition to enter the Chamber of Deputies for the first time. The independence of the judiciary enshrined in the Constitution was safeguarded by the Higher Council of the Magistrature. Tunisia had also opened its frontiers to the new information technologies, guaranteeing all individuals and associations access to the Internet worldwide network.

48. The Tunisian delegation regretted to observe that, notwithstanding the efforts made to promote dialogue and concertation in place of confrontation and verbal escalation, some NGOs preferred to allow themselves to be manipulated and to indulge in misinformation, peddling unfounded allegations about his country. In acting thus, the NGOs concerned were pursuing covert political ends, for a noble concern with the defence of human rights could not be confused with a determination to cause harm to certain countries at any price.

49. Mr. ERMAKOV (Russian Federation) said that, when his country set its foot on the path of democratization, it gave priority to the reform of the administration of criminal justice and the penitentiary system. The latter left much to be desired for a variety of reasons. In the first place, sloughing off a totalitarian past was not an easy task. Secondly, most of Russia's prisons had been built in the nineteenth century and were in a state of decay such that rapid improvement was impossible on account of the lack of financial resources.

50. The reforms introduced in the field of justice had taken the form of the adoption of a new penal code and a new code to govern the execution of sentences. The preparation of a code of penal procedure was also on the agenda. The presidential pardon granted to 300,000 convicts had helped to relieve the pressure on the penitentiary system and thus had contributed to an improvement in the living conditions of prisoners.

51. In accordance with the recommendations of the Council of Europe, control of the penal administration had been transferred from the Ministry of the Interior to the Ministry of Justice. Draft bills for the purpose had already been submitted to the Duma. Finally, it should be recalled that a month earlier the Russian Parliament had ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Punishments or Treatment.

52. In view of the importance which the Russian delegation attached to the mechanisms of the Commission and the role they played, particularly in Russia, it hoped that the mandates of the Special Rapporteur on Torture and the Working Group on Enforced or Involuntary Disappearances would be extended at the current session. In that connection Russia regretted that the number of States having signed what was a fundamental international instrument - the Convention against Torture - was not rising faster. It was also to be hoped that the optional protocol relating to the Convention, which could not but increase the latter's effectiveness, would reach the final drafting stage without delay.

53. The Russian delegation wished to draw attention to an extremely disquieting problem, namely the barbaric practice of hostage taking, which unfortunately was becoming increasingly widespread throughout the world. The Russian delegation intended to submit a draft resolution on this question and hoped that it would receive the full support of the members of the Commission.

54. Mr. VIGNY (Observer for Switzerland) considered that the Commission on Human Rights had a moral and political obligation to extend for three years the mandate of the Working Group on Enforced or Involuntary Disappearances. The figures published by the Working Group in its most recent report covered 22 countries, in which over 100 cases of disappearances in those categories had been reported during the last 25 years; 9 of the countries concerned were in Latin America, 7 in Asia, 4 in Africa and 2 in Europe. To be able to combat this contemptible phenomenon, the Working Group had to be able to go to the field. Iraq was still refusing the Working Group access to its territory; but it seemed that Colombia, Iran, Turkey and Yemen were more willing to admit it. Switzerland appealed to the authorities of those countries to allow the Working Group to visit their territory once again during the present year.

55. The Commission on Human Rights should also extend the mandate of the Special Rapporteur on Torture by three years. He too should be able to visit countries in which it was alleged that torture was a widespread practice. Switzerland was therefore counting on the promises to that effect made to the Special Rapporteur by Cameroon, Egypt and, more especially, Turkey. Switzerland also urged Algeria to allow Mr. Nigel Rodley to enter the country, together with the Special Rapporteur on Summary or Arbitrary Extrajudicial Executions. Switzerland also requested China, India, Indonesia and Kenya to respond positively to the requests for permission to make visits addressed to

them by the Special Rapporteur. Colombia should ensure follow-up on the mission of the Special Rapporteur by informing him of the measures taken in response to his recommendations. The same applied to Pakistan, which had already given the Commission oral assurances concerning the follow-up on the mission of the Special Rapporteur to that country in 1994.

56. Efforts to eliminate torture should be primarily concentrated on prevention. It was therefore desirable that the optional protocol concerning the Convention against Torture, the initial sponsors of which had been Costa Rica and Switzerland, should be adopted speedily.

57. Mrs. GWANMESIA (Observer for Cameroon) reminded the meeting that her country had replied in detail to the allegations made by Mr. Rodley in paragraphs 44 to 46 of his report (E/CN.4/1998/38/Add.1), concerning violations of human rights in Cameroon. In so doing Cameroon had showed the importance it attached to the mandate of the Special Rapporteur.

58. The emergency legislation in Cameroon was repealed in 1990. In the same year a National Commission for Human Rights and Freedoms was set up to take cognizance of complaints of human rights violations. The members of the Commission visited prisons to ensure that the prisoners were not victims of abuse. Finally, on 18 January 1996 Cameroon had adopted a new Constitution containing guarantees concerning the rights of detainees, and in November of the same year the National Assembly amended the Cameroon Penal Code to make torture an offence. Recently two police officers in Yaoundé, implicated in acts of torture which had led to the death of a detainee, had been charged.

59. The Cameroon authorities did not in any way approve unlawful acts committed by public officials. Equally, it did not accept that genuine or purported victims of such acts should surreptitiously transmit information to foreign missions or organizations in order to enlist their support when they themselves had sometimes committed serious violations of the law. It had also to be remembered that detention was never painless, if only because it deprived the individual of his freedom. That was an unquestioned fact, even in international instruments such as the Convention against Torture. Law enforcement officials had a difficult task; that was recognized in the Code of Conduct for Law Enforcement Officials adopted by General Assembly resolution 34/169. Detention centres were overcrowded, archaic and unhealthy. These matters could not be dealt with rapidly owing to the difficult financial situation of the country; consequently the condition of prisoners was even more unpleasant. In that context the training of penitentiary personnel was a major preoccupation of the Government of Cameroon. To achieve a rapid improvement in this domain, the Cameroon delegation appealed to the Office of the High Commissioner for Human Rights for assistance. Lastly, respect for human rights was not reconcilable with poverty; that was the field in which the international community should act first.

60. In conclusion, the Cameroon delegation repeated the invitation to visit Cameroon extended orally to the Special Rapporteur, Mr. Nigel Rodley.

61. Mr. DAUDIN (International Committee of the Red Cross - ICRC), speaking under agenda item 8, observed that during the last 15 years the capacity to observe and prevent violations had increased significantly, and he stressed the importance of complementarity in the measures taken.

62. The ICRC intervened to assist persons deprived of liberty. Initially it confined its field of activity to armed conflicts; but now it was to an increasing degree intervening in crisis situations of all kinds. It worked with the consent of the authorities concerned and without commenting on the reasons for imprisonment. Its approach was one of promoting responsibility on the part of the competent authorities by developing in-depth dialogue with them and offering them constructive and realistic recommendations.

63. The ICRC sometimes had to make up for shortcomings on the part of the authorities by providing assistance in fields such as health, food and hygiene. It also observed with concern that in an increasing number of countries the material conditions of detention were deteriorating to such a degree that the physical integrity, and even the lives, of prisoners were endangered.

64. In conclusion, Mr. Daudin reaffirmed that the ICRC had neither the pretension nor the resources to defend all the rights of detainees. His organization sought primarily to promote reconciliation by focusing on the strengthening of national and institutional capacities and of cooperation. He urged the international community to adopt a similar approach.

65. Mr. SOUALEM (Algeria), speaking on agenda item 8, reiterated that the Government of Algeria had always cooperated with the mechanisms of the Commission on Human Rights and intended to continue that cooperation with transparency and serenity. The effectiveness of those mechanisms depended on an objective examination of allegations received.

66. In that connection he regretted that the Special Rapporteur on Torture, in that part of his report concerning Algeria, had not applied that principle and had seen fit to reproduce word for word the allegations contained in a document from an NGO whose hostility to his country was well known.

67. It should be recalled that the conclusions of the examination of the second periodic report submitted to the Committee Against Torture, on 18 November 1996, had been positive inasmuch as the Committee had noted with satisfaction that Algeria had adopted new legislative measures and set up machinery designed to prevent and punish torture. The Algerian courts would not admit any form of impunity or indulgence towards persons guilty of excesses, and had proved this by inflicting heavy penalties on the authors of such acts.

68. Mr. JAHROMI (Observer for the Islamic Republic of Iran) stressed the vital importance of the right to freedom of opinion and expression in any society which aspired to democracy. Truth could only be attained through the free expression of ideas in all their diversity. Likewise, freedom of expression was essential to enable society as a whole to monitor the performance of the Government. In that connection it was encouraging to observe that that right was becoming increasingly acknowledged, but at the

same time its scope had to be understood and steps taken to ensure that it rested on the principles of impartiality, non-selectivity and objectivity, particularly within international institutions. A selective approach in that field could not but be prejudicial to the cause of freedom of expression; a recent example was the case of Roger Garaudy, a Muslim writer who had expressed his opinion on a historical event and had been sentenced.

69. It was to be regretted that the international community, and in particular the human rights defenders, had shown no interest in that conviction. In that field, as in others, it was essential to put an end to attitudes involving application of double standards.

70. Mr. Gallegos Chiriboga (Ecuador) took the Chair.

71. Mr. EFTYCHIOU (Observer, Cyprus) recalled that the problem of the missing persons in Cyprus, which had come before the Commission for the first time in February 1975, had still not been resolved. However, on 31 July 1997 an agreement on the problem had been reached between President Clerides and the Turkish Cypriot leader Mr. Denktash. Both agreed on the right of families to be informed of the fate of their loved ones, and, where the latter were proved to be dead, to have them buried in accordance with their religious traditions and practices. An initial exchange of information on the places where missing persons were buried had already taken place. The other steps provided for in the agreement would be implemented in a spirit of cooperation and goodwill.

72. Another positive development was the identification of one of the five United States citizens who disappeared in Cyprus after the Turkish invasion of 1974. That event, together with the forthcoming appointment by the United Nations Secretary-General of his representative in the Committee on Missing Persons, gave cause for hope that a solution to that tragic humanitarian problem would be found.

73. Mr. SINYINZA (Observer, Zambia) wished to set the record straight concerning that part of Mr. Rodley's report relating to Zambia.

74. After the failure of the attempted coup d'état in Zambia on 28 October 1997, the persons implicated in it were detained pending formal charges against them. In view of the complexity of the matter, it had been thought prudent to invoke emergency legislation in order to facilitate the investigations. That legislation had since been repealed. In any case, the detainees had enjoyed all their rights, had received medical treatment and had had access to lawyers of their choice. Some of them had also challenged the legality of their detention before the courts.

75. As for the allegations of torture made against the police authorities by detainees, the Zambian delegation wished to assure the Commission that those allegations had been referred to the national human rights commission, an independent body with official responsibility under the Constitution for investigating acts of that kind.

76. Mrs. KEYHANI (International Federation of Women in Legal Careers) stated that in any country the conduct of the judiciary and the rules governing it

were the best yardsticks for assessing the level of respect for human rights in that country. In Iran the will of the "supreme religious leader" had for a number of years overridden the law and justified death sentences issued not only against opponents of the regime but also against citizens of other countries. In Iran the use of torture was systematic, and cruel treatments such as flogging, amputation of limbs and stoning to death were still current. Recently in Kermanshah a religious dignitary had declared that if the judiciary were to drag a few persons to the city square and cut off their hands or stone them to death, society would return to the proper path. Video recordings of stoning scenes in Iran had been smuggled out. Among other things, they show a "religious" judge casting the first stone at the victims.

77. As regards freedom of thought and expression in Iran, the Ayatollah Mohajarani had recently stated that he had sole responsibility for censorship. During the last 19 years the ruling clergy had suppressed all dissenting views, seeing them as attacks against the foundations of religion and morality. The human rights situation in Iran was serious, and strong action was needed.

78. Mr. GHEBREHIWET (International Council of Nurses) said that his organization, founded almost 100 years ago, had grown into a federation of 118 national associations of nurses throughout the world. The vocation of nurses, both men and women, was to deliver care to any person in need of care, and in particular to detainees, irrespective of their race or their religious or political convictions. However, in an increasing number of countries health-care auxiliaries were themselves being arrested, imprisoned and tortured simply because they had done their jobs. The Commission on Human Rights, Governments and NGOs were therefore called upon to recognize that health care was a fundamental right of all individuals, including detainees and victims of torture; to condemn restrictions imposed on health-care personnel on the basis of political, geographical, racial or religious considerations; and to protect nurses against reprisals. To that end it was important to secure compliance with General Assembly resolution 37/194 concerning the principles of medical ethics.

79. Mr. RASOOL (World Muslim Congress) denounced the systematic violations of human rights being committed in Jammu and Kashmir, the seven north-eastern States of India and the Punjab. The emergency legislation adopted by India covered all the exactions of the armed forces, the paramilitary forces and the secret armies. The Armed Forces Special Powers Act of 1958 gave the Indian army absolute licence to kill, maim and arrest. The infamous Terrorist and Destruction Activities (Prevention) Act, although it technically lapsed in 1995, was still being applied intensively in Jammu and Kashmir, where, according to a statement by the Indian Minister of State for Home Affairs, 482 people were still being detained under that Act. The National Security Act of 1980 permitted detention of individuals for up to one year. Similarly, the Jammu and Kashmir Disturbed Area Act and the Jammu and Kashmir Public Safety Act empowered the Indian army to make arbitrary arrests.

80. The Indian National Human Rights Commission had declared that it did not have competence to investigate the exactions of the Indian armed forces. The ICRC had not been authorized to enter the detention or transit centres where youths of Kashmiri origin were tortured. The human rights organizations

estimated that 32,000 of the latter were being held in these centres. India, as the occupying Power, was obliged to comply with the provisions of the 1949 Geneva Conventions and the International Covenant on Civil and Political Rights, which protected the right to life, even in situations of armed conflict or when a state of emergency had been proclaimed. The Commission should bring pressure to bear on India to end the violations of human rights committed in Jammu and Kashmir and send the Special Rapporteur on the question of human rights and states of emergency there to assess the seriousness of the situation.

81. Mr. SHIMOJI (World Federation of Trade Unions) said that there were persons in detention in every country in the world. What distinguished countries was the manner in which those detainees were treated. It had been observed that in the countries where levels of education were low, the possibility of people under detention being maltreated was often greater.

82. He pointed out, while the State arrogated to itself the right to arrest and imprison suspected terrorists, the terrorist groups themselves did not hesitate to have recourse to torture, kidnappings, rape and forced marriages. The facts presented to the Commission concerning the situation in Pakistan showed that the Mojahirs and the Sindis were being subjected to inhumane violence by ultranationalist and mercenary groups.

83. If the rights of individuals were to be preserved, the authorities must be educated and made aware of the rights of detainees. In addition, the international community should denounce societies in which detention and torture were practised in accordance with social and religious norms. Finally, when acts of detention and torture were committed by non-State elements such as terrorist groups, the international community should condemn those groups and, more importantly, the States which offered them havens.

84. Mr. BHUGYAL (Worldview International Foundation) noted with satisfaction that the Special Rapporteur on torture and the Working Group on Enforced or Involuntary Disappearances had in their respective reports expressed concern regarding the human rights of detainees in Tibet, where the human rights situation was showing no improvement. Although the Chinese authorities had allowed the Working Group on Arbitrary Detention to visit the Drapchi prison, it had not been able to assess the real situation of prisons and prisoners in Tibet. However, the visit was an encouraging sign. However, according to information received from Tibet, several detainees, including 1 of the 10 prisoners permitted to have private interviews with members of the Working Group, had been severely punished for raising pacific slogans when the delegation visited the prison. Worldview International Foundation considered it regrettable that that incident had not been mentioned in the report of the Working Group and requested the latter to make public the names of the 10 prisoners it had met in Drapchi prison and to ensure that they suffered no reprisals.

85. The human rights situation in Tibet was deteriorating. This was clear from the following examples: more than 1,200 political prisoners, including 39 juveniles and 259 women, were still imprisoned; and in 1996 and 1997 over 350 Tibetans were detained for political reasons. Political prisoners were still being tortured, and at least six of them had died in prison

in 1997. Enforced disappearances were increasing in numbers and the Chinese authorities were still refusing to tell the Working Group the whereabouts of the eleventh Panchen Lama of Tibet. To protest against that situation, 6 Tibetans had been on an indefinite hunger strike in New Delhi for 25 days. The Commission would help to save the lives of those six persons by adopting a statement on the situation in Tibet.

86. Ms. SIKORA (Transnational Radical Party) stated that there was a country in which the authoritarian regime did not allow its prisons to be visited and refused to admit the Special Rapporteur of the Commission. The one-party regime controlled the whole of the judiciary and prohibited all trade union activity. That country had not taken any steps to comply with the bodies of minimum rules for the treatment of detainees. Ill-treatment was frequent, since complaints were never upheld. Worse still, anybody could be arrested for such nebulous offences as disrespect, resisting authority, enemy propaganda or conduct contrary to socialist morality. All that information was contained in the most recent report (E/CN.4/1998/69) of the Special Rapporteur on the situation of human rights in Cuba. It was time to reaffirm that the United States embargo - which was not a worldwide embargo - was merely an alibi for the Cuban regime. Anybody who still thought that that totalitarian regime held the keys to Paradise was forgetting that the whole island was a prison full of political prisoners. The Transnational Radical Party, some of whose members were in that prison, would continue, together with other non-violent organizations, to campaign to secure the triumph of right.

87. Mr. MORALES (Committee for the Defence of Human Rights in Central America) drew attention to the many shortcomings of the system of administration of justice in Guatemala, in particular because the judges were unable to discharge their duties in full independence. This was attributable primarily to the fact that the only body with power to appoint judges and to apply administrative sanctions was the Supreme Court of Justice. Nominations and promotions of members of the judiciary, far from being governed by objective criteria, were to a considerable degree subject to political manoeuvrings unacceptable where the rule of law applied.

88. It was also very difficult for the judiciary bodies to escape from the influence of the other powers of State, pressure groups and the media, particularly when they were called upon to judge public officials responsible for human rights violations. A clear example was to be found in the acquittal, in November 1997, of the persons responsible for the death of a student during a demonstration in 1994. Lastly, in Guatemala, judges, lawyers and all persons with a role in the judiciary were very frequently the subject of death threats when they had to deal with particularly serious cases. The prosecution witnesses in the affair of the Xaman massacre received death threats. It had also been observed throughout the trial that the armed forces had bribed witnesses. The law concerning the protection of accused persons and persons connected with the administration of justice, adopted on 27 September 1996, had not led to any improvement in this situation.

89. Mr. SANCHEZ (Federation of Associations for the Defence and Promotion of Human Rights) wished publicly to affirm the support of the federation he represented for the Spanish higher court (Audiencia nacional española) to

which the matter of the Spanish nationals who had disappeared during the periods of military dictatorship in Argentina and Chile had been referred. That court was competent to judge the crimes against humanity committed during those periods of dictatorship in accordance with the principle of universal penal jurisdiction enshrined in Spanish domestic legislation and in international law. The armed forces in Argentina and Chile had committed acts defined as "crimes against humanity" in international customary law. The authors of those crimes had not been judged as they should have been because they had been amnestied under laws referred to as "clean slate" or "due obedience" laws promulgated under pressure from the armed forces. Inasmuch as those crimes had already been designated as crimes against humanity in international law, they came within the scope of Spanish penal legislation, even though the latter came into force after those crimes had been committed. There was no time-bar for crimes against humanity.

90. Rejection of impunity was inherent in the notion of democracy; it embodied the right to truth, the right to justice and the right to compensation. Unquestionably, the cases being judged by the Spanish court in question constituted a response to a need to satisfy those rights. For that reason, Spain was in favour of the creation of an international criminal tribunal in order to prevent new genocides and other crimes against humanity.

91. As regards the human rights situation in the world in general, the Federation of Associations for the Defence and Promotion of Human Rights was deeply concerned by the continual violations of those rights in Turkey affecting the Kurdish people and those to which the population of East Timor were being subjected by Indonesia. Lastly, it denounced the obstacles which the Government of Morocco was continuing to place in the way of the process of identification of Sahraoui citizens for purposes of the forthcoming referendum. The federation therefore called for the immediate dispatch of international observers to the spot to ensure that the electoral lists were drawn up with due transparency.

92. Mr. Selebi (South Africa) resumed the Chair.

93. Mr. SANNIKOV (International League for Human Rights) welcomed the report of the Special Rapporteur on Freedom of Opinion and Expression on his mission to Belarus (E/CN.4/1998/40/Add.1). The situation in that country had deteriorated. This was evidenced by arrests of demonstrators, intimidation campaigns against political opponents and even the prohibition of independent media. The quasi-totalitarian system set up following the rigged referendum of 1996 ignored the principle of separation of powers. The President of the Republic, who could govern by decree, controlled both the judiciary and the Parliament - a situation totally incompatible with the process of democratization. In addition, a certain number of recent events gave reason to believe that the authorities had no intention of putting an end to the massive violations of human rights. Two Russian television journalists had received suspended prison sentences for clearly political reasons. The author of a satirical documentary on the President had been beaten up by unknown persons; an independent journalist had been kidnapped; and the principal non-governmental newspaper (Svaboda) had been banned. The authorities had also taken additional measures to restrict freedom of expression. The amendments to the Law on the Press which came into force in January 1998 made

the latter a practically empty shell. Responsibility for censorship lay with Customs officials and public councils set up in January 1998. The international community must take significant steps to urge the Belarus authorities to comply with their international obligations and restore respect for human rights in the country.

94. Mr. IDIGOV (Society for Threatened Peoples) drew the attention of the Commission to the violations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment committed by the Russian Federation in the Chechen Republic of Ichkeria. The Russian Federation was refusing to implement the peace agreement it had signed on 12 March 1997. Since the end of the war the Russian authorities had continued to apply their policy of ethnic discrimination against the peoples of the Caucasus in general and the Chechens in particular, in the latter case under the guise of combating organized crime. The Society for Threatened Peoples requested the Commission on Human Rights to intervene with the Russian Federation to bring an end to that situation.

95. Mr. JOINET (Working Group on Arbitrary Detention) wished to correct a serious mistake which had occurred in the annex to the report of the Working Group on its visit to China (E/CN.4/1998/44/Add.2). The French text of the report stated that the delegation had interviewed 10 inmates in Drapchi prison and that some of them had been chosen from a list supplied by the authorities. In actual fact the list in question had been submitted to the authorities. He also pointed out that during its visit to Drapchi prison the Working Group had heard protests being made by one person held in the compound for common law prisoners. Thus, contrary to what had been affirmed by an NGO, no group of persons was involved. In addition, Human Rights Watch had recognized that it had read the report somewhat hastily and that consequently its criticisms should be moderated. Finally, since China had undertaken to implement the four recommendations made by the Working Group, Mr. Joinet stated that it would be necessary to return to the subject next year to review the situation.

96. Mr. CUMARASWAMY (Special Rapporteur on the Independence of Judges and Lawyers) offered some clarifications in reply to the statements made by the Peruvian delegation. First of all, the statement that the report was three years late was inaccurate, since the mission of the Special Rapporteur to Peru had taken place in September 1996. Moreover, he considered that he had a duty to cover recent events in his report, since in his view his mandate was of a continuing nature. As for the allegations that he had based his report on the opinions of third parties, he invited the Government of Peru to inform him of any item of information in his report which was inaccurate. Contrary to what had been said by the Peruvian delegation, he had transmitted a copy of his report to the Permanent Mission of Peru on 3 February 1998. As regards the press conference he had given at the end of his mission in September 1996, during which he had announced his preliminary observations, he could not remember the Government of Peru raising any objections on the subject during the fifty-third session of the Committee. In conclusion, he stated that he was impatiently awaiting the observations of the Government of Peru on the conclusions and recommendations of substance contained in his report.

Statements made in exercise of the right of reply

97. Mr. SUAREZ FIGUEROA (Venezuela) said that in its statement made on the previous day the International Prison Watch (which was, incidentally, doing excellent work) had only described part of the actual situation. It was true that the administration of justice in Venezuela was suffering from many shortcomings, particularly as regards the situation in penitentiary establishments. Fortunately, the Government had during the last three years taken a considerable number of steps to bring about significant improvements in the judicial system. Those measures included the implementation of a programme costing US$ 150 million to combat overcrowding in prisons; the adoption of a new Code of Penal Procedure which would speed up the machinery of justice and provide better safeguards for the rights of detainees; the preparation of a law making police officers committing acts of torture liable to punishment; the launching of a large-scale programme designed to improve conditions of detention and the training of prison warders; expansion of the system of free legal aid and facilitation of relations between detainees and members of their families; the establishment of a register of detainees; distinction between accused and convicted persons; and the separation of detainees in accordance with the type of offence. The non-governmental organizations could not claim ignorance of those measures, all the more so as they had been associated with the preparation of the national human rights programme.

98. Mr. FERNANDEZ PALACIOS (Cuba) speculated on the sources of finance of the NGO known as the Transnational Radical Party, which was able to accreditate 70 persons; participation at a session of the Commission on Human Rights was an expensive matter, even for certain government delegations. The Cuban delegation did not wish to return to the substance of the statement by the Transnational Radical Party, for it knew perfectly well who was behind statements of that kind. However, it would request the Committee of NGOs to take the necessary steps to ensure that such a situation did not arise again.

99. The Chairman declared the debate on agenda item 8 closed.

The meeting rose at 6.25 p.m.